

### **Part C – Decision Under Appeal**

The decision under appeal is the Ministry of Social Development and Poverty Reduction (Ministry) Reconsideration Decision dated April 9, 2024, which determined the Appellant was not eligible for the Persons with Disabilities designation because they did not meet three of the five criteria. The Ministry was satisfied that they met the age and duration criteria but not satisfied, based on the evidence presented, that they met the following criteria:

- Severe mental or physical impairment;
- Severe impairment directly and significantly restricts daily living activities; and
- Assistance required with daily living activities as a result of significant restriction.

The Ministry found the Appellant was not one of the prescribed classes of persons eligible for Persons with Disabilities designation on alternative grounds. As there was no information or argument on this point, the panel considers it not to be an issue in this appeal.

### **Part D – Relevant Legislation**

*Employment and Assistance for Persons with Disabilities Act (Act), section 2*

Employment and Assistance for Persons with Disabilities Regulation (Regulation), sections 2 and 2.1

Relevant sections of the legislation can be found in the Schedule of Legislation at the end of this decision.

**Part E – Summary of Facts**

The hearing took place as a written hearing on July 16, 2024.

Relevant Evidence Before the Minister at Reconsideration

**Persons with Disabilities Application (application) (July 20, 2023)*****Self-Report***

The Appellant provided information concerning their work and life in their home country before arriving in Canada.

After arriving in Canada in 2016, they found a job working at a restaurant, which they state had an unsafe work environment. The floor was wet and greasy and consequently they had two very bad falls. After the second fall (2018) they were taken to the hospital by ambulance. WCB was involved and they were sent for many tests and to specialists etc. Their chronic pain from the falls has persisted.

This disability has affected every area of their life. Their chronic pain and severe anxiety/PTSD make life a struggle. They struggle to find work as they cannot sit, stand or walk for any length of time. When they sit, the sciatic pain is bad after 15 minutes and they need to move. They can only stand for 20-25 minutes and when they walk, they need to rest after 30 minutes. They feel pain when using their back (lifting and bending), as well as sitting, standing and walking. They experience left wrist pain occasionally when using their left hand. They also have shoulder pain when they raise their left arm above their shoulders. Their left leg becomes stiff and painful when they use it too much. After walking too much, they experience numbness in their left foot and lower leg. They cannot exercise physically due to pain.

The Appellant adds they sleep very poorly, have nightmares, anxiety and depression and continue to experience PTSD since the accident. They feel anxious about not working and having enough money to live on. They feel anxious about their health and future and that they won't be able to provide for themselves. Due to pain and lack of good sleep, they find themselves tired and without energy. They struggle to focus and concentrate even though they are on medication for this.

***Medical Report (December 19, 2023) – signed by the Appellant's doctor***

The doctor (general practitioner) provided the following information.

<b>Diagnosis</b>	<b>Date of onset</b>
Chronic pain – back pain/wrist pain	March 2018
Depression and anxiety	March 2018
PTSD	March 2018

### **Health History**

The doctor writes that the Appellant has been struggling with depression and anxiety since 2018 and at times had a very hard time coping with mental illness. The Appellant has insomnia, which causes chronic fatigue and low energy. They have been on medication for anxiety, but it was minimally effective.

As well, after a work injury in 2018, the Appellant has been experiencing pain in their low back, elbows, shoulder, and left wrist. The pain limited her exercise tolerance greatly. They cannot walk/sit for an extended time.

The Appellant has been prescribed Duloxetine, which often causes sedation, and Ativan. They need to be on antidepressants and Anxiolytic for a long time, and on pain medication as needed. The anticipated duration of the medication and/or treatment is stated to be chronic.

They do not require prostheses or aids for the impairment.

### **Functional Skills**

The doctor indicates the Appellant can walk 2 - 4 blocks and climb 5+ stairs unaided. They can only lift under 2 kgs. (under 5 lbs.) and can remain seated for less than 1 hour.

The Appellant has difficulties with communication (cognitive). As well, the doctor indicates there are significant deficits with cognitive and emotional function (consciousness, executive, memory, emotional disturbance, motivation, attention).

#### *Functional skills comments regarding the above*

The doctor writes that the Appellant has problems concentrating, occasional poor memory, anxious mood and lack of motivation on nearly a daily basis. "Sometimes making proper decisions is difficult."

They have known the Appellant for three years and have seen them 11 or more times.

### **Assessor Report (December 19, 2023) – signed by the Appellant's doctor**

The doctor provided the following information.

The doctor states the Appellant lives alone, with a roommate in a suite.

### **Mental or Physical Impairment**

The Appellant's mental or physical impairments that impact their ability to manage daily living activities are anxiety, depression, PTSD, chronic pain and Attention Deficit Disorder.

### **Ability to Communicate**

The doctor indicates the Appellant's speaking, reading and writing ability is satisfactory and their hearing is good.

### **Mobility and Physical Ability**

The doctor states the Appellant is independent with:

- walking indoors/outdoors;
- climbing stairs;
- standing;
- lifting; and
- carrying and holding.

### **Cognitive and Emotional Functioning**

The doctor indicates there is no impact with:

- impulse control;
- insight and judgement;
- motor activity;
- language;
- psychotic symptoms;
- other neurological problems; and
- other emotional problems.

The doctor indicates there is minimal impact with consciousness.

The doctor indicates there is moderate impact with:

- bodily functions;
- executive; and
- memory.

The doctor indicates there is major impact with:

- emotion;
- attention/concentration; and
- motivation.

### **Daily Living Activities**

The doctor indicates the Appellant is independent with:

- Personal care (dressing, grooming, bathing, toileting, feeding self, regulating diet, transfers in/out of bed and on/off chairs);

- Basic housekeeping (laundry, basic housekeeping);
- Shopping (going to/from stores, reading prices and labels, making appropriate choices, carrying purchases home);
- Meals (meal planning, food preparation, cooking, safe storage of food);
- Pay rent and bills (banking, budgeting);
- Medications (filling/refilling prescriptions, taking as directed, safe handling and storage); and
- Transportation (getting in/out of a vehicle).

The doctor states the Appellant needs periodic assistance from another person using public transit due to back pain, using transit schedules and arranging transportation because walking to a station or standing in the bus is a problem. Taking public transit is often too complicated and scary for them.

### **Social Functioning**

The doctor indicates the Appellant is independent with making appropriate social decisions and is able to secure assistance from others.

The doctor indicates the Appellant needs periodic support/supervision with developing and maintaining relationships and interacting appropriately with others (due to anxiety and depressed mood). The Appellant requires continuous support/supervision dealing appropriately with unexpected demands as they find it difficult.

The doctor describes the Appellant's relationship with their immediate social network as, "marginal functioning – little significant participation. Communication: relationships often minimal and fluctuate in quality".

The doctor describes the Appellant's relationship with their extended social network as, "marginal functioning – little more than minimal acts to fulfill basic needs".

No assistance is provided for the Appellant, either through people, assistive devices or an assistance animal.

The Appellant has been affected significantly with chronic pain. They have not been able to work for the past few years due to the above disabilities.

### **Letter from the Ministry to the Appellant (February 22, 2024)**

The Ministry states it denied the Appellant's application for Persons with Disabilities designation and included the reasons for the denial.

### **Request for Reconsideration (March 20, 2024)**

The Appellant did not provide reasons for the Request for Reconsideration.

**Notice of Appeal (April 17, 2024)**

The Appellant states they didn't have anyone to help them but now have an advocate. They don't speak English well and need help to understand.

Admissibility of New Evidence

The panel is authorized under Section 22(4) of the *Employment and Assistance Act*, to consider evidence in addition to the information the Ministry had at the time of the Reconsideration Decision if it is reasonably required for a full and fair disclosure of all matters related to the decision under appeal. In this case no new evidence was submitted by either party.

## Part F – Reasons for Panel Decision

### Issue

The issue on appeal is whether the Ministry's Reconsideration Decision was reasonably supported by the evidence or was a reasonable application of the legislation in the circumstances of the Appellant.

Did the Ministry reasonably determine the Appellant was not eligible for the Persons with Disabilities designation, because the Minister was not satisfied that the following criteria was met?

- Severe mental or physical impairment;
- Severe impairment directly and significantly restricts daily living activities; and
- Assistance required with daily living activities as a result of significant restriction.

### Appellant's Position

The Appellant argues their disability has affected every area of their life

With their chronic pain they cannot sit, stand or walk for any length of time and feel pain when lifting and bending. They also have shoulder pain and their left leg becomes stiff and painful when they use it too much. After walking too much, they experience numbness in their left foot and lower leg.

As well, they state severe anxiety/PTSD makes life a struggle. They sleep very poorly, have nightmares and a lot of anxiety. They feel anxious about not working, their health and their future.

### Ministry's Position

*Mental Functioning*

The Ministry is not satisfied that the Appellant has a severe mental impairment. The Ministry acknowledges the Appellant is experiencing limitations to their cognitive and emotional functioning. However, this does not appear to severely impair the Appellant's mental function. Only a few major impacts to their daily cognitive and emotional functioning were reported, and they are independent in all activities related to personal activities, care, and finances. Additionally, no information is provided to suggest the Appellant requires support or supervision to be maintained in the community or that there are any safety concerns.

### *Physical Functioning*

The Ministry is not satisfied that the Appellant has a severe physical impairment. The Ministry acknowledges that the Appellant experiences chronic pain and is unable to perform heavy lifting. However, this alone does not establish a severe impairment of their overall physical functioning. As the Appellant can stand for 20 -25 minutes, walk, and climb stairs independently for a reasonable amount of time and can lift up to five lbs., the Ministry determines that the impairment does not restrict their ability to function independently and appropriately and for a reasonable amount of time.

### *Daily Living Activities*

The Ministry is not satisfied that the Appellant has a severe impairment that, in the opinion of a prescribed professional, directly and significantly restricts their ability to perform the daily living activities set out in the legislation.

The Ministry relies on the medical opinion and expertise from the Appellant's medical practitioner to determine whether the impairment directly and significantly restricts the ability to perform daily living activities either continuously or periodically for extended periods. The term "directly" means that there must be a causal link between the severe impairment and the restriction. The direct restriction must also be significant.



Neither the Appellant nor their doctor have described the support and supervision needed and therefore the Ministry is unable to confirm a significant restriction.

Also, while the Ministry acknowledges that the Appellant's anxiety causes them to need help at times, no information is provided to confirm how often the anxiety flares up to this degree or how long it lasts.

#### *Help Required with Daily Living Activities*

The doctor has not indicated that the Appellant needs help from another person, an assistive device, or the services of an assistance animal. As it has not been established that daily living activities are significantly restricted, it cannot be determined that significant help is required.

#### **Panel Analysis**

Section 2(2) of the Act sets out the requirements that must be met for the Minister to designate a person as a Person with Disabilities. One requirement is that the Minister is satisfied that the person has a severe mental or physical impairment.

The panel notes, "severe" and "impairment" are not defined in the legislation. The Ministry considers the extent of any impact on daily functioning as shown by restrictions on mental or physical abilities. The panel finds that an assessment of severity based on physical and mental functioning, including any restrictions, is a reasonable application of the legislation.

#### **Mental Impairment**

The doctor writes the Appellant's mental impairment impacting their ability to manage daily living activities are anxiety, depression, PTSD, chronic pain and Attention Deficit Disorder.

Under cognitive and emotional functioning, the doctor indicates there is no impact with impulse control, insight and judgement, language, psychotic symptoms, and other emotional problems, minimal impact with consciousness and moderate impact with, bodily functions and executive and memory. The panel notes the Appellant's cognitive and emotional functioning is mostly not impacted, with some minimal and moderate impact indicated.

The doctor does indicate there is major impact with emotion, attention/concentration and motivation and significant deficits with consciousness, executive, memory, emotional disturbance, motivation and attention. However, when commenting on these deficits, the doctor states, the Appellant has problems concentrating, occasional poor memory, anxious mood and lacks motivation nearly daily - sometimes making proper decisions is difficult. The panel finds the qualifiers used to describe the Appellant's cognitive and emotional deficits in the Medical Report (i.e., "anxious mood" "occasional" "nearly daily" and "sometimes") are not suggestive of a severe mental impairment.

As well, the panel notes although the doctor describes the Appellant's relationship with her immediate and extended social networks as, "marginal functioning", they also indicate the Appellant is independent making appropriate social decisions and securing assistance from others.

The Appellant states they sleep very poorly, have nightmares, anxiety and depression and continue to experience PTSD since the accident and struggle to focus and concentrate.

The panel acknowledges that the Appellant struggles with their mental health. However, as stated above, because the Appellant's cognitive and emotional functioning is mostly not impacted, the qualifiers used to describe their cognitive and emotional deficits are not suggestive of a severe mental impairment and they are independent making appropriate social decisions, the panel finds there is insufficient evidence to conclude that the Appellant has a severe mental impairment, impacting their mental functionality. The panel therefore finds the Ministry reasonably determined that the Appellant has not established a severe mental impairment.

### **Physical Impairment**

The doctor indicates the Appellant can walk two to four blocks and climb five plus stairs unaided. They can lift under two kilograms (under 5 lbs.) and can remain seated for less than one hour. The doctor also states the Appellant is independent with, walking indoors/outdoors, climbing stairs, standing, lifting and carrying and holding. As the doctor indicates the Appellant

is independent with the above physical activities, the panel finds it cannot be considered that this assessment supports a severe physical impairment.

The Appellant states they cannot sit, stand or walk for any length of time. When they sit, after 15 minutes they need to move. They can only stand for 20-25 minutes and when they walk, they need to rest after 30 minutes. They experience left wrist pain occasionally.

The panel finds the Appellant's functionality (e.g. walking for 30 minutes, standing for 20–25 minutes, "occasional" wrist pain), is not suggestive of a severe physical impairment.

The panel finds the evidence above is insufficient to conclude that the Appellant has a severe physical impairment and therefore finds the Ministry reasonably determined that a severe physical impairment has not been established.

### **Restrictions in Ability to Perform Daily Living Activities**

Section 2(2) of the Act also states the Minister must be satisfied that in the opinion of a prescribed professional, a severe physical or mental impairment directly and significantly restricts the person's ability to perform daily living activities continuously, or periodically for extended periods. Daily living activities are defined in section 2(1)(a) of the Regulation.

At least two activities must be restricted in a way that meet the requirements, as provided by the case *Hudson v. British Columbia (Employment and Assistance Appeal Tribunal)*, 2009 BCSC 1461. To be significant, the restriction must be to a great extent, such as not being able to do the activities without a lot of support. Continuous means the activity is generally restricted all the time and periodic for extended periods means frequently or for longer periods of time.

The panel finds that although the doctor states the Appellant needs periodic support/supervision with developing and maintaining relationships and interacting appropriately with others and continuous support/supervision dealing appropriately with unexpected demands (taking public transit is complicated and scary), it is unclear as to how this support relates to the daily living activities. The panel finds there is insufficient evidence, from the Appellant's doctor, to demonstrate that in the opinion of a prescribed professional, the

Appellant's daily living activities are significantly restricted either continuously or for extended periods.

As well, as the panel found the evidence does not demonstrate a severe mental or physical impairment, the panel finds it cannot be determined that the Appellant has a severe physical or mental impairment that directly and significantly restricts the Appellant's ability to perform daily living activities continuously, or periodically for extended periods.

Therefore, the panel finds the Ministry reasonably determined this section of the legislation was not met.

### **Help to Perform Daily Living Activities**

The panel notes section 2(2) of the Act also requires that as a result of restrictions with daily living activities, the person requires help to perform those activities and in order to perform them, the person requires an assistive device or the significant help or supervision of another person.

However, as the panel found that the Ministry was reasonable in finding that the daily living activities were not restricted periodically for extended periods or continuously, the panel also finds the Ministry was reasonable in determining that no assistance is required to perform the daily living activities.

### **Conclusion**

In conclusion, the panel finds the Ministry's decision that determined the Appellant was not eligible for Persons with Disabilities designation was reasonably supported by the evidence. The panel confirms the Ministry's decision.

The Appellant is not successful on appeal.

## Schedule of Legislation

### Employment and Assistance for Persons with Disabilities Act

#### **Persons with Disabilities**

**2** (1)In this section:

"assistive device" means a device designed to enable a person to perform a daily living activity that, because of a severe mental or physical impairment, the person is unable to perform;

"daily living activity" has the prescribed meaning;

"prescribed professional" has the prescribed meaning.

(2)The minister may designate a person who has reached 18 years of age as a person with disabilities for the purposes of this Act if the minister is satisfied that the person is in a prescribed class of persons or that the person has a severe mental or physical impairment that

(a)in the opinion of a medical practitioner or nurse practitioner is likely to continue for at least 2 years, and

(b)in the opinion of a prescribed professional

(i)directly and significantly restricts the person's ability to perform daily living activities either

(A)continuously, or

(B)periodically for extended periods, and

(ii)as a result of those restrictions, the person requires help to perform those activities.

(3)For the purposes of subsection (2),

(a)a person who has a severe mental impairment includes a person with a mental disorder, and

(b)a person requires help in relation to a daily living activity if, in order to perform it, the person requires

- (i)an assistive device,
- (ii)the significant help or supervision of another person, or
- (iii)the services of an assistance animal....

## Employment and Assistance for Persons with Disabilities Regulation

### **Definitions for Act**

**2** (1)For the purposes of the Act and this regulation, "daily living activities",

(a)in relation to a person who has a severe physical impairment or a severe mental impairment, means the following activities:

- (i)prepare own meals;
- (ii)manage personal finances;
- (iii)shop for personal needs;
- (iv)use public or personal transportation facilities;
- (v)perform housework to maintain the person's place of residence in acceptable sanitary condition;
- (vi)move about indoors and outdoors;
- (vii)perform personal hygiene and self care;
- (viii)manage personal medication, and

(b)in relation to a person who has a severe mental impairment, includes the following activities:

- (i)make decisions about personal activities, care or finances;
- (ii)relate to, communicate or interact with others effectively.

(2)For the purposes of the Act, "prescribed professional" means a person who is

- (a)authorized under an enactment to practise the profession of

- (i) medical practitioner,
- (ii) registered psychologist,
- (iii) registered nurse or registered psychiatric nurse,
- (iv) occupational therapist,
- (v) physical therapist,
- (vi) social worker,
- (vii) chiropractor, or
- (viii) nurse practitioner...

### **Part 1.1 — Persons with Disabilities**

#### **Alternative grounds for designation under section 2 of Act**

**2.1** The following classes of persons are prescribed for the purposes of section 2

(2) *[Persons with Disabilities]* of the Act:

- (a) a person who is enrolled in Plan P (Palliative Care) under the Drug Plans Regulation, B.C. Reg. 73/2015;
- (b) a person who has at any time been determined to be eligible to be the subject of payments made through the Ministry of Children and Family Development's At Home Program;
- (c) a person who has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the *Community Living Authority Act*;
- (d) a person whose family has at any time been determined by Community Living British Columbia to be eligible to receive community living support under the *Community Living Authority Act* to assist that family in caring for the person;
- (e) a person who is considered to be disabled under section 42 (2) of the *Canada Pension Plan* (Canada).

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**Part G – Order**

The panel decision is: (Check one)       Unanimous       By Majority

The Panel       Confirms the Ministry Decision       Rescinds the Ministry Decision

If the ministry decision is rescinded, is the panel decision referred back  
to the Minister for a decision as to amount?      Yes       No

**Legislative Authority for the Decision:**

*Employment and Assistance Act*

Section 24(1)(a)       or Section 24(1)(b)

Section 24(2)(a)       or Section 24(2)(b)

**Part H – Signatures**

Print Name  
Connie Simonsen

Signature of Chair

Date (Year/Month/Day)  
2024/07/17

Print Name  
Vivienne Chin

Signature of Member

Date (Year/Month/Day)  
2024/07/17

Print Name  
Daniel Chow

Signature of Member

Date (Year/Month/Day)  
2024/07/17